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**UNITED STATES PATENT AND TRADEMARK OFFICE**

Re: Application of: Benjamin OSHLACK, et al.  
Serial No.: 09/702,283  
Examiner: Bennet M. Celsa  
Art Unit: 1627  
Filed: September 30, 2000  
For: **CONTROLLED RELEASE HYDROCODONE  
FORMULATIONS**

Non-Fee Amendment  
Assistant Commissioner for Patents  
Washington, D.C. 20231

October 18, 2002

**RESPONSE TO ELECTION REQUIREMENT**

Sir:

In response to the Election Requirement mailed on September 3, 2002, Applicants make the following elections.

A. In response to the election of disclosed species of oral dosage form, Applicants elect the capsule dosage form species.

The claims that read on the elected invention include claims 1-3 and 5-41.

B. The Examiner further stated that "applicant may elect an example from the specification which specifically describes the additional components (e.g. other than hydrocodone) which meets a claimed delayed release profile." In response, Applicants elect Example 3.

These elections are made with traverse based entirely on the position that the search and examination of all of the subject matter in the application is not unduly burdensome. This traverse should not be construed as an admission that either the dosage form species or the particular exemplified formulations are not patentably distinct.

In support of this position, the Examiner is directed to the Manual of Patent Examining Procedure, Eighth Edition, §803, a copy of which is attached, which states the following:

*If the search and examination of an entire application  
can be made without serious burden, the examiner must examine  
it on the merits, even though it includes claims to independent  
or distinct inventions.*

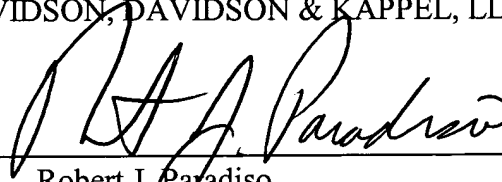
It is submitted that it would not be unduly burdensome for the Examiner to search the genus of oral solid controlled release hydrocodone dosage forms and the genus of formulations that provide the claimed parameters.

An early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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By



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